

No. 23-0656

In the Supreme Court of Texas

THE STATE OF TEXAS; OFFICE OF THE ATTORNEY GENERAL OF TEXAS; KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS; OFFICE OF THE TEXAS SECRETARY OF STATE; AND JANE NELSON, IN HER OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE,

Appellants,

v.

HARRIS COUNTY, TEXAS; AND CLIFFORD TATUM,

Appellees.

On Direct Appeal from the
345th Judicial District Court, Travis County

MOTION TO ABATE APPEAL

TO THE HONORABLE SUPREME COURT OF TEXAS:

Appellants move the Court to abate this appeal and cancel the oral argument scheduled for November 28, 2023. On November 22, 2023, Plaintiff-Appellee Harris County nonsuited its case in the trial court, *see* Attachment A, and on November 24, Intervenor-Plaintiff-Appellee Clifford Tatum followed suit, *see* Attachment B. As this appeal will be moot once the trial court completes the ministerial act of entering an appropriate order, further litigation at the present time is unwarranted. Although undersigned has not been able to reach Mr. Tatum's counsel, Plaintiff-Appellee Harris County does not oppose this motion, and Mr. Tatum has nonsuited. Once the

trial court dismisses the cases below, Appellants intend to move to dismiss this appeal.

“At any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may dismiss a case, or take a non-suit.” Tex. R. Civ. P. 162. “Under Texas law, parties have an absolute right to nonsuit their own claims for relief at any time during the litigation until they have introduced all evidence other than rebuttal evidence at trial.” *Villafani v. Trejo*, 251 S.W.3d 466, 468-69 (Tex. 2008).

Here, Plaintiffs have filed nonsuits during the pendency of interlocutory appeals from the denial of a plea to the jurisdiction and grant of temporary injunctions. “One unique effect of a nonsuit is that it can vitiate certain interlocutory orders, rendering them moot and unappealable.” *Id.* at 469. Here, a nonsuit vitiates a trial court’s interlocutory order denying a plea to the jurisdiction, *University of Texas Medical Branch at Galveston v. Estate of Blackmon ex rel. Shultz*, 195 S.W.3d 98, 101 (Tex. 2006), and extinguishes the trial court’s temporary injunctions. *See General Land Office of State of Tex. v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex. 1990) (“As a consequence of the trial court’s granting the nonsuit, the temporary injunction ceased to exist, and the appeal became moot.”).

Additionally, “the nonsuit extinguishes a case or controversy from the moment the motion is filed.” *Shultz*, 195 S.W.3d at 100. Nevertheless, though “a nonsuit is effective when it is filed,” and the “trial court generally has no discretion to refuse to dismiss the suit,” this appeal is not yet moot: a “ministerial” order dismissing the

cases below is needed, and the trial court “need not immediately dismiss the suit when notice of nonsuit is filed.” *Id.*

Accordingly, Appellants move the Court to abate the appeal and cancel the oral argument scheduled for November 28, 2023, pending the trial court’s ministerial act of entering appropriate orders dismissing the cases below. Once the trial court acts, Appellants intend to dismiss this appeal as moot.

PRAYER

The Court should cancel oral argument and abate the appeal pending dismissal of plaintiffs’ cases in the trial court.

Respectfully submitted.

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Attorney General of Texas

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First Assistant Attorney General

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Assistant Solicitor General

Counsel for Appellants

CERTIFICATE OF SERVICE

On November 24, 2023, this document was served on Wallace B. Jefferson, lead counsel for Harris County, via wjefferson@adjtlaw.com, and Gerald Birnberg, lead counsel for Clifford Tatum, via birnberg@wba-law.com.

/s/ Lanora C. Pettit
LANORA C. PETTIT

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 464 words, excluding emptied text.

/s/ Lanora C. Pettit
LANORA C. PETTIT

CERTIFICATE OF CONFERENCE

On November 22 and November 24, 2023, undersigned counsel attempted to confer with counsel for both Mr. Tatum and Harris County. On November 24, counsel for Harris County confirmed that he was unopposed to this motion. Undersigned never received a reply from counsel for Mr. Tatum.

/s/ Lanora C. Pettit
LANORA C. PETTIT

In the Supreme Court of Texas

THE STATE OF TEXAS; OFFICE OF THE ATTORNEY GENERAL
OF TEXAS; KEN PAXTON, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF TEXAS; OFFICE OF THE TEXAS
SECRETARY OF STATE; AND JANE NELSON, IN HER OFFICIAL
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Appellants,

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HARRIS COUNTY, TEXAS; AND CLIFFORD TATUM,

Appellees.

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APPENDIX

	Tab
Notice of Nonsuit Without Prejudice.....	A
Clifford Tatum’s Notice of Nonsuit of all Claims Without Prejudice.....	B

TAB A:
NOTICE OF NONSUIT WITHOUT PREJUDICE

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CAUSE NO. D-1-GN-23-003523

HARRIS COUNTY, TEXAS	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
v.	§	
THE STATE OF TEXAS; OFFICE OF	§	
THE ATTORNEY GENERAL OF TEXAS;	§	
KEN PAXTON, in his Official Capacity as	§	
Attorney General of Texas; OFFICE OF	§	
THE TEXAS SECRETARY OF STATE;	§	
and JANE NELSON, in her Official	§	TRAVIS COUNTY, TEXAS
Capacity as Texas Secretary of State,	§	
<i>Defendants.</i>	§	
CLIFFORD TATUM,	§	
<i>Intervenor,</i>	§	
THE STATE OF TEXAS and THE	§	
ATTORNEY GENERAL OF TEXAS,	§	
<i>Defendant-Intervenors.</i>	§	345TH JUDICIAL DISIRICT

PLAINTIFF'S NOTICE OF NONSUIT WITHOUT PREJUDICE

Pursuant to Texas Rule of Civil Procedure 162, Plaintiff Harris County, Texas hereby provides the Court written notice of its nonsuit without prejudice of its claims against The State of Texas; Office of the Attorney General of Texas; Ken Paxton, in his Official Capacity as Attorney General of Texas; Office of the Texas Secretary of State; and Jane Nelson, in her Official Capacity as Texas Secretary of State. All costs of court are to be taxed against the party incurring them.

November 22, 2023

Respectfully submitted,

/s/ Jonathan Fombonne

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2023, a true and correct copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/Jonathan Fombonne

First Assistant County Attorney

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TAB B:
**CLIFFORD TATUM'S NOTICE OF NONSUIT OF ALL
CLAIMS WITHOUT PREJUDICE**

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Respectfully submitted,

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Attorneys for Intervenor, Clifford Tatum

CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2023, a true and correct copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/ Richard Schechter
Richard Schechter

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Maria Mendoza-Williamson on behalf of Lanora Pettit

Bar No. 24115221

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Envelope ID: 81927411

Filing Code Description: Motion not Otherwise Listed

Filing Description: SB1750 Motion to Abate Appeal_Final

Status as of 11/27/2023 7:56 AM CST

Case Contacts

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Associated Case Party: Office of the Attorney General of Texas

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Maria Mendoza-Williamson on behalf of Lanora Pettit

Bar No. 24115221

maria.williamson@oag.texas.gov

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Status as of 11/27/2023 7:56 AM CST

Associated Case Party: Office of the Attorney General of Texas

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